

## Message Text

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SUBJECT: EUROPEAN COMPANY LAW--THE EC COMMISSION GREEN PAPER ON  
THE FIFTH DRAFT DIRECTIVE

REF: (A) 75 EC BRUSSELS 10333, (B) 75 EC BRUSSELS 4083,  
(C) EC A-237JULY 31, 1974

1. SUMMARY: THE EC COMMISSION HAS PREPARED A " GREEN PAPER"  
PROPOSING A MORE FLEXIBLE APPROACH TO THE HARMINIZATION OF  
NATIONAL LAW ON CORPORATE STRUCTURE AND EMPLOYEE PARTICIPATION  
THAN IS FOUND IN THE FIFTH DRAFT DIRECTIVE ON COMPANY LAW.  
DEBATE IN THE EUROPEAN PARLIAMENT AND CONSLTATIONS WITH  
GOVERNMENTS,INDUSTRY AND LABOR ARE EXPECTED TO RESULT IN A  
REVISED PROPOSAL BY THE COMMISSION FOR THE FIFTH DIRECTIVE BY  
THE END OF THE YEAR. END SUMMARY.

2. IT WILL BE RECALLED THAT THE EC COMMISSION HAS HANDLED  
COMPANY LAW ON TWO SEPARATE TRACKS. ON ONE HAND IT HAS PROPOSED  
A CODE OF CORPORATE LAW UNDER WHICH COMPANIES MAY  
CHOOSE TO INCORPORATE IF THEY SO DESIRE (SEE REFTELS  
A AND B). ON THE OTHER HAND,THE COMMISSIN HAS PROPOSED SEVERAL  
EC COUNCIL DIRECTIVES INTENDED TO HARMONIZE THE CORPORATE LAW  
OF THE MEMBER STATES.  
IF APPROVED BY THE EC COUNCIL,MEMBER STATES WOULD  
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HAVE TO CHANGE THEIR NATIONAL LAWS TO CONFORM TO THE DIRECTIVES

AND FIRMS WOULD,OF COURSE,BE SUBJECT TO THE NATIONAL LAW ( (SEE REF F).

3. OF THE FOUR EC COUNCIL DRAFT DIRECTIVES ON COMPANY LAW BEFORE THE EC COUNCIL,THE MOST CONTROVERSIAL HAS BEEN THE FIFTH DRAFT DIRECTIVE COVERING THE STRUCTURE OF LIMITED LIABILITY COMPANIES. THE COMMISSION'S PROPOSAL,WHICH WAS INTRODUCED IN 1972, PROVIDES FOR A TWO-TIER BOARD OF DIRECTORS. IT ALSO REQUIRES THAT EMPLOYEES HAVE A LEAST ONE-THIRD OF THE SEATS ON THE SUPERVISORY BOARD OF DIRECTORS.

4. IT BECAME CLEAR TO THE COMMISSION THAT OPPOSITION IN SEVERAL MEMBER STATES (FRANCE,ITALY,THE UK) WAS FAR TO STRONG TO EXPECT THE PROPOSAL TO RECEIVE EC COUNCIL APPROVAL. FOR HISTORICAL AND IDEOLOGICAL REASONS, EMPLOYERS AND UNIONS IN THESE COUNTRIES ARE NOT READY FOR WORKER PARTICIPATION AS ENVISAGED BY THE COMMISSION. THE COMMISSION THEREFORE WENT BACK TO THE DRAWING BOARD. IN NOVEMBER IT PUBLISHED A "GREEN PAPER" ENTITLED "EMPLOYEE PARTICIPATION AND COMPANY STRUCTURE IN THE EUROPEAN COMMUNITY". (A COPY WAS SENT TO EUR/RPE,ATTENTION BRESLER.) THE MAIN OBJECTIVE OF THE " GREEN PAPER" IS TO STIMULATE DEBATE IN THE EUROPEAN PARLIAMENT AND AMONG INDUSTRY AND LABOR ON THE ISSUES OF CORPORATE ORGANIZATION AND WORKER PARTICIPATION. FOLLOWING DISCUSSION IN THE EUROPEAN PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE,WHICH IS EXPECTED TO TAKE PLACE IN THE COURSE OF 1976,THE COMMISSION WILL REDRAFT ITS ORIGINAL PROPOSAL TO TAKE INTO ACCOUNT OPINIONS OF THOSE INSTITUTIONS,AS WELL AS THE SENTIMENTS OF INDUSTRY,LABOR,ETC.

5. THE " GREEN PAPER" WHICH HAS BEEN PUBLISHED AS SUPPLEMENT 8/75 TO THE BULLETIN OF THE EUROPEAN COMMUNITIES,AND HAS BEEN SENT TO WASHINGTON AGENCIES AND ALL EC CAPITALS,ADVOCATES A FLEXIBLE APPROACH TO THE PROBLEMS OF COMPANY STRUCTURE AND EMPLOYEE PARTICIPATION. THE COMMISSION REALIZES THAT DURING A TRANSITIONAL PERIOD IT WILL BE NECESSARY TO ALLOW A DUALIST SYSTEM WITH SOME STATES EMPLOYING A SINGLE BOARD OF DIRECTORS AND OTHERS A TWO-TIER SYSTEM.THE ULTIMATE ISSUE IS LIKELY TO BE THE LENGTH OF THE TRANSITIONAL PERIOD THE COMMISSION STRONGLY BELIEVES THAT THE UNCLASSIFIED

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TWO-TIER BOARD OF DIRECTORS IS THE PREFERABLE CORPORATE STRUCTURE AND A DESIRABLE GOAL.

6. A TRANSITIONAL SOLUTION FOR EMPLOYEE PARTICIPATION IS ALSO ENVISAGED IN THE "GREEN PAPER". FOR THOSE

COUNTRIES, OR COMPANIES,WHICH CANNOT ADOPT A SYSTEM OF EMPLOYEE PARTICIPATION ON THE SUPERVISORY BOARD OF DIRECTORS,

THE COMMISSION SUGGESTS THAT THERE SHOULD BE GUARANTEES OF WORKER PARTICIPATION BASED ON THE EXISTING LABOR-MANAGEMENT STRUCTURES. IN OTHER WORDS,NATIONAL LEGISLATION SHOULD BE MODIFIED SO THAT EMPLOYEES PARTICIPATE ACTIVELY AND EFFECTIVELY IN CORPORATE DECISION MAKING THROUGH SHOP STEWARDS,WORK COUNCILS,ENTERPRISE COUNCILS,OR LABOR AGREEMENTS UNTIL THE DAY WHEN EMPLOYEES WILL BE REPRESENTED ON THE SUPERVISORY BOARD OF CORPORATIONS ALTHOUGH EMPLOYEE PARTICIPATION WILL NOT BE SIMILAR IN THE DIFFERENT MEMBER STATES,THERE WILL BE A "CONVERGENCE" OF THE ROLE OF EMPLOYEES IN CORPORATE DECISION MAKING.

7. A COMMISSION OFFICIAL TOLD US THAT THE COMMISSION WOULD HOPE TO FORMALLY AMEND THE FIFTH DRAFT DIRECTIVE BY THE END OF 1976 FOLLOWING THE DISCUSSIONS MENTIONED IN PARA 4 AND CONSULTATIONS WITH THE MEMBER STATES. (CONSULTATIONS AT A HIGH LEVEL WITH THE UK,FRANCE AND ITALY ARE EXPECTED TO TAKE PLACE THIS SPRING.) BECAUSE OTHER COMPANY LAW PROPOSALS ARE STILL BEFORE THE EC COUNCIL,PASSAGE OF A REVISED FIFTH DRAFT DIRECTIVE IS NOT EXPECTED BEFORE 1980.

8. COMMENT: THE MISSION RECOMMENDS THAT WASHINGTON OFFICIALS AND EMBASSY OFFICERS INTERESTED IN CORPORATE LAW AND LABOR-MANAGEMENT RELATIONS READ THE "GREEN PAPER". IN ADDITION TO DEFINING THE ISSUES AND SPELLING OUT THE VARIOUS APPROACHES TO THE PROBLEM,IT DESCRIBES THE NATURE OF EMPLOYEE PARTICIPATION IN ALL OF THE MEMBER STATES. IT IS ONE OF THE EC COMMISSION STAFF'S BETTER EFFORTS.  
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